IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2673 OF 2004

Ramesh Jaggu Patel @]
Ramesh Michael,]
at present detained at]
Sabarmati Jail, Gujrat]..Applicant

Vs.

State of Maharashtra & Anr.]..Respondents

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Mr.S.R.Chitnis with Mr.G.H.Keluskar, Advocates for Applicant
Mr.R.Y.Mirza, A.P.P. for the State
Mr.H.V.Mehta counsel for the Respondent no.2.

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CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : SEPTEMBER 9,2004

P.C.

1. Heard Shri.Chitnis, the learned counsel appearing for the applicant and Shri.H.V.Mehta the learned counsel appearing for the respondent-Union of India. The applicant is seeking bail in C.R.No.5 of 2003 of Daman Police Station. The said case is registered under Section 302 and 120-B of IPC read with Sections 25 and 27 of the Arms Act. In the said case, one Kalidas Fakir Patel alias Mota was shot dead on 6th January, 2003.

2. The applicant had earlier preferred application for bail before this Court i.e. Criminal Application No. 1449 of 2004. The said application came to be rejected by detailed speaking order dated 19th April, 2004. The learned counsel for the applicant has submitted that the present application for bail has been preferred on a fresh ground. He has submitted that it is the prosecution case that the applicant had entered into a conspiracy to murder one Kalidas Fakir Patel alias Mota and that the applicant engaged services of one Subhash Bhaskar Nair to murder Kalidas Patel. The learned counsel has submitted that there is no admissible material to show that it was Subhash Nair who had actually fired bullets at Kalidas Patel and killed him. The incident wherein Kalidas Patel was shot dead, was witnessed by two persons i.e. Smt.Meenaben Patel and Mohanbhai Patel. The learned counsel for the applicant has submitted that Subhash Nair was an unknown person as far as these two witnesses are concerned and as such, Subhash Nair ought to have been identified by these two witnesses in a test identification parade. However, in the present case only photos

of Subhash Nair were shown to these witnesses and these witnesses have identified the person in the photo as 'Subhash Nair' i.e. the person who had fired at Kalidas Patel. Shri.Chitnis has submitted that the Supreme Court has frowned upon such identification i.e. identification by showing the photos to the witnesses. In support of this contention, he has placed reliance on para 360 in the case of **Kartar Singh Vs. State of Punjab reported in 1994 SCC (Cri.) Page 899**. It is further submitted that if this identification by means of photograph is excluded from consideration, there is no other admissible material to show that it was Subhash Nair who had fired at Kalidas Patel. Shri.Chitnis has submitted that this aspect of the matter had not been earlier urged before the Court and thus, it has not been taken into consideration and hence, the present application has been submitted on the ground that if there is no admissible material to show that it was Subhash Nair who had killed Kalidas Patel, then there is no material to show the complicity of the applicant in the murder of Kalidas Patel.

3. Shri.Chitnis has submitted that there is no

other material except the statements of various co-accused which bring out the connection between the applicant and Subhash Nair and these statements cannot be taken into consideration at this stage. In the present case, the charge sheet has been filed only under Sections 302 and 102-B of IPC read with Sections 25 and 27 of the Arms Act. As the offences are only under IPC and the Arms Act, I totally agree with the proposition that the statement of the co-accused or the accused i.e. the applicant himself recorded by the police during investigation, cannot be used against the applicant.

4. I have carefully considered the submission made on behalf of the applicant, which is reflected in para 2 above and perused the material relating to the present case. The present case is under Sections 302 and 120-B of IPC. Thus, it is clear that the applicant is also facing a charge under Section 120-B of IPC. It is the prosecution case that there was previous enmity between the present applicant and the deceased since over ten years. In the past, the deceased had beaten the present applicant, mother of the present applicant and

other family members and the deceased was causing trouble in the illicit liquor business of the applicant, hence, the applicant wanted to do away with the deceased Kalidas Patel. A large number of witnesses have stated about the enmity between the present applicant and the deceased.

. In the present case, statement of one Shiva alias Mohlingam alias Satish Pille has been recorded. Sometime prior to the incident, the applicant was in Sabarmati Jail. Shiva was also in Sabarmati jail at the said time. Shiva and the applicant became good friends. So also the original accused no.12 in the present case i.e. Subhash Bhaskar Nair was also in Sabarmati jail as an under trial prisoner in a case of theft of motor-cycle. Shiva also became friendly to Subhash Nair. Subhash Nair wanted to be released on bail and asked witness Shiva to help him in getting him released on bail. Hence, Shiva contacted the present applicant. The present applicant told Shiva that he would make all arrangements to get Subhash Nair released on bail provided that Subhash Nair does his work after being released. The said work was that Kalidas Patel was to be eliminated.

The applicant told Shiva that he would pay any amount to the person who eliminates Kalidas Patel. Shiva informed Subhash Nair and Subhash Nair agreed in the presence of Shiva and told the present applicant that he is ready to do the job of killing the said person. Thereafter, the present applicant got himself admitted in the civil hospital as he wanted to contact his friends and relatives for his release and also to engage an advocate in order to get Subhash Nair released on bail. After about 15 days of the applicant returning back from the civil hospital to Sabarmati jail, Subhash Nair came to be released on bail. Thereafter on 6th January, 2003 Kalidas Patel came to be murdered in village Bhimpore by firing bullet shots at him. After the news appeared in the newspaper on 7th January, 2003, the applicant told Shiva that revolver used in the commission of the said offence belonged to him. So also on enquiry, the applicant told Shiva that cash of Rs.8 lakhs was given through his wife Smt.Bamba (accused no.9) to Subhash Nair. All these above facts are reflected in the statement of Shiva.

5. Besides the statement of Shiva there is the

statement of Sayed Javed Ahmed. Both Shiva and Sayed Javed Ahmed are witnesses and they are not accused persons in the present case. Sayed Javed Ahmed has stated that co-accused Jailo (accused no.1) told him that there is some work of Ramesh Sheth (applicant) and he wants to finish someone. Jailo told him that the work of murdering Mota (Kalidas) of Bhimpore has to be done, Michael Sheth (applicant) has also arranged a plan. He requested this witness to do the work, however, this witness refused. After some days, Jailo told this witness that applicant has released one big criminal from Ahmedabad Jail and if vehicle is given to him, they would finish the work of killing Kalidas Patel by tomorrow. Jailo informed him that main intention is that Ramesh (applicant) is in jail and nobody would suspect him in respect of murder of Kalidas. He also informed him that the person who was released from Ahmedabad jail to do the work of finishing Kalidas Patel, was in custody for committing theft of motorcycle in Surat. Again this witness refused to do the work. This witness has further stated that few days thereafter, wife of the applicant came with Jailo. She was carrying a bag with her at that time. She and Jailo were

talking to one person who was tall and who had a black complexion. After few minutes, Jailo and wife of the applicant came back and there was no bag in her hand at that time. Jailo informed this witness that wife of the applicant had come only because huge amount of money had to be given to the said person.

6. From the statements of these two witnesses i.e. Shiva and Sayed, it is clear that the applicant had entered into conspiracy with Subhash Nair to murder Kalidas Patel. Section 120-A of IPC reads as under:

> . **Definition of criminal conspiracy.**___ When two or more persons agree to do, or cause to be done,---
>
> . (1) an illegal act, or
>
> . (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy;
>
> . Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.
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> . [*Explanation.*--- It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object].

7. From plain reading of provisions of Section 120-A, it is clear that when two or more persons agree to do an illegal act, they commit an offence of criminal conspiracy. Nothing further is required to be done, the agreement itself between the parties to do an illegal act is enough. Thus when the applicant and Subhash Nair agreed to murder Kalidas Patel, an offence under Section 120-A is clearly made out. The statements of Shiva and Javed had been taken into consideration by this Court while rejecting the earlier application. Looking to the material on record, it cannot be said that there is no material at all in the present case against the applicant. There is enough material on record to show that the applicant entered into a criminal conspiracy with Subhash Nair to murder Kalidas Patel. From the material on record, it is clear that the applicant had conspired to murder Kalidas Patel i.e. the applicant agreed to do an illegal act. In such case, as the conspiracy was to commit an illegal act, the Section does not further require that there should be any further overt act. From the

material on record, the offence under Section 120-B of the IPC is clearly made out. As far as Shiva is concerned, Subhash Nair was known to Shiva and therefore, there is no question of holding any identification parade. Thus, even if the identification by Meenaben Patel and Mohanbhai Patel by means of photos is excluded, there is sufficient material against the applicant in the present case to connect him with the murder of Kalidas Patel.

8. It may be stated here that besides the present offence, the applicant is involved in about 14 cases. Many of these cases are of serious nature. Some of the cases are as under:

Sr. No.	Crime No.	Police Station	Offence under Sections
1.	117 of 1990	Daman	143,147,148,149 452,302, 323 of IPC.
2.	228 of 1994	Pardi	307, 323 of IPC
3.	190 of 1996	Daman	307,120-B, 506 IPC read with Section 25(1) (A)(B) of the Arms Act.
4.	154 of 1998	Vapi Udyog	379,411, 120-B 114 of IPC and

			Forest Act.
5.	15 of 2000	Daman	186, 341,392, 492, 323 of IPC
6.	53 of 2001	Pardi	307, 323, 324 etc. of IPC
7.	51 of 2002	Daman	143, 427, 435 and 120-B of IPC.

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9. In view of the above, I do not think that this is a fit case to grant bail. Application for bail is rejected.

(V.K.TAHILRAMANI,J)